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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,021	07/16/2003	William J. Wallace III	JAM699	1152
30245	7590	03/09/2004	EXAMINER	
ANTHONY EDW. J CAMPBELL PO BOX 160370 AUSTIN, TX 78716			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,021	<b>Applicant(s)</b> WALLACE, WILLIAM J.	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-18 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 4 and 17 are objected to because of the following informalities:  
"neoprene" should not start with a capital "N". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 13, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Speth et al. (US 5,271,101).

Speth et al. provides a short garment with padding having a size and shape to cover the lower abdomen and crotch area of a wearer (figure 1, identifiers 10 and 16: column 2, lines 14-24). Stitching means for attaching the padding to the shorts (column 2, lines 31-33 and column 3, lines 20-30). The shorts of Speth et al. are made out of nylon (column 3, lines 13-19). A user is capable of rest the butt of a fishing pole on their abdomen in the customary position used for fighting fish when wearing the shorts of Speth.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Stembridge (US 6,353,932).

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Stembridge provides a garment having a trunk portion and legs (figure 1, identifier 10). The trunk portion having an open top about the waist of a wearer and a rear area for covering the buttocks of the wearer (figure 1, identifier 14: column 3, lines 48-52). A frontal crotch area and opposite sides forming hip areas for covering the hips of a wearer, the trunk portion and the trunk portion and legs having exterior surfaces (figure 1, identifier 14). A padding attached to the exterior surface of the frontal crotch area and covering a wearer's crotch and lower abdomen (figure 1, identifier 34: column 3, lines 28-32 and column 4, lines 15-16). The garment of Stembridge are capable of having the butt of a fishing pole resting on their abdomen in the customary position used for fighting fish. It is inherent that the pants of Stembridge have some type of securement located at the waist of the wearer so that the pants stay on the user.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 7, 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge in view of Williams (US 5,742,939).

Stembridge provides a garment having a trunk portion and legs (figure 1, identifier 10). The trunk portion having an open top about the waist of a wearer and a rear area for covering the buttocks of the wearer (figure 1, identifier 14:

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column 3, lines 48-52). A frontal crotch area and opposite sides forming hip areas for covering the hips of a wearer, the trunk portion and the trunk portion and legs having exterior surfaces (figure 1, identifier 14). A padding attached to the exterior surface of the frontal crotch and abdomen area by means of stitching (figure 1, identifier 34: column 3, lines 28-32 and column 4, lines 15-16 and column 2, lines 36-40). It is inherent that the pants of Stembridge have some type of securement located at the waist of the wearer so that the pants stay on the user. The garment of Stembridge is capable of having the butt of a fishing pole resting on their abdomen in the customary position used for fighting fish.

However, Stembridge fails to teach a plurality of hook and loop material strips attached to the exterior surface of the frontal crotch area and to the padding to removably attach the padding to the short garment. The padding being made of foam material. A back surface of the padding having opposite-side hook and loop material attached to cover an area larger than the surface area of the hook and loop material attachment strips.

Williams provides hook and loop material attached to the exterior surface of a frontal crotch area and to the padding to removably attach the padding to the garment (figures 1, 2 and 5, identifiers 38, 55, 59 54, 56 and 60: column 1, lines 41-67). The padding being made of a foam material (column 4, lines 38-49).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided hook and loop material across the entire back surface of the padding or in the form of a plurality of hook and loop material strips because Applicant has not disclosed

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that hook and loop material across the entire back surface of the padding or in a plurality of strips provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with hook and loop material across the entire back surface, in a plurality of strips or in just one strip because the hook and loop material having any shape of covering any amount of area on the back of the padding would still secure the padding to the corresponding hook and loop material on the exterior of the garment. Therefore, it would have been an obvious matter of design choice to modify Williams to obtain the invention as specified in claim 9.

It would have been obvious to one of ordinary skill in the art to provide a pair of pants in any length as desired, since it has been well founded to alter a pants length based upon desired look and end use including cutting into shorts.

It would have been obvious to have provided the padded garment of Stembridge with the removable pads of Williams, since the pads of Stembridge being removable would allow the user to supply and remove the pads to the garment as desired. The removal of the pads during laundering would be especially useful so that the pads don't become deformed in the washer and dryer.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge in view of Kirven (US 6,014,771).

Stembridge provides a garment as described above in claim 1. However, Stembridge fails to teach the padding being made out of neoprene.

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Kirven provides padding made out of neoprene incorporated into a garment (column 1, lines 63-67).

It would have been obvious to have provided the padded garment of Stembridge with the neoprene padding of Kirven, since neoprene padding provides a resilient padding that is also water resistant.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge in view of Goodwin (US 6,519,780).

Stembridge provides a garment as described above in claim 1. However, Stembridge fails to teach the foam padding made out of foam.

Goodwin provides a pad made out of a foam material (column 1, lines 18-20).

It would have been obvious to have provided the padded garment of Stembridge with the foam padding material of Goodwin, since foam padding has good attenuation properties along with user comfort.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge in view of Speth et al. (US 5,271,101).

Stembridge provides a padded garment as described above in claim 1. However, Stembridge fails to teach the garment being shorts made out of a nylon material.

Speth et al. provides a pair of shorts being made out of a nylon material (column 3, lines 13-19).

It would have been obvious to have provided the padded garment of Stembridge in the nylon material of Speth et al., since nylon material would

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create a more form fitting garment to contour to a user's body so as not to get in the way during movements.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge and Willams as applied to claim 7 above, and further in view of Kirven (US 6,014,771).

Stembridge and Willams fail to teach the padding made out of neoprene.

Kirven provides padding made out of neoprene incorporated into a garment (column 1, lines 63-67).

It would have been obvious to have provided the padded garment of Stembridge and Willams with the neoprene padding of Kirven, since neoprene padding provides a resilient padding that is also water resistant.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stembridge and Willams as applied to claim 7 above, and further in view of Speth et al.

Stembridge and Willams fail to teach the garment made out of nylon. Speth et al. provides a padded garment being made out of a nylon material (column 3, lines 13-19).

It would have been obvious to have provided the padded garment of Stembridge and Willams in the nylon material of Speth et al., since nylon material would create a more form fitting garment to contour to a user's body so as not to get in the way during movements.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Speth et al. in view of Carrington (US 6,408,446).



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Speth et al. provides a padded short garment as described above in claim 13. However, Speth et al. fails to teach the padding attachment means being a plurality of hook and loop material strips.

Carrington provides padded attached to a short garment by a plurality of hook and loop attachment strips (figures 1 and 2, identifier 35: column 3, lines 40-54).

It would have been obvious to have provided the padded short garment of Speth et al. with the padding attached by hook and loop strips, since the garment of Speth et al. with padding attached by hook and loop strips would allow the wearer to remove and attach the pads to the short garment as desired especially removing the pads during laundering so that they do not become deformed.

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Speth et al. in view of Fee et al. (US 5,689,836).

Speth et al. provides a padded short garment as described above in claim 13. However, Speth et al. fails to teach the padded short garment having the padding made out of neoprene.

Fee provides a padded short garment with padding made out of Neoprene (column 3, lines 46-59).

It would have been obvious to have provided the padded shorts of Speth et al. with the neoprene padding of Fee et al., since the neoprene padding provided in the shorts of Speth et al. would provide a resilient padding that is also water resistant.

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***Allowable Subject Matter***

14. Claims 3, 8 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

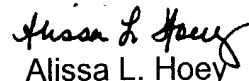
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. White, Atack et al., McGowan, Regan, Braid, Zevchak, Kallman, Ross, Gladman et al., Stewart et al., Wiener, Harlem et al., Puco et al., Wilson et al., Keen, Counts et al., Endler, Young et al., Grounds et al., Gagne and Dugan are all cited to show closely related garments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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